

APPEAL NO. 043130  
FILED JANUARY 27, 2005

This case arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was initially held on May 5, 2004. The hearing officer in that case determined that the compensable injury of \_\_\_\_\_, includes the lumbar spine at L3-4 and L4-5. The appellant (carrier), in that case, appealed contending that the true issue was whether the compensable injury extends to the respondent's (claimant) "current condition" at L3-4 and L4-5. The Appeals Panel in Texas Workers' Compensation Commission Appeal No. 041286 decided, July 21, 2004, remanded the case for the hearing officer to determine "[w]hether the compensable injury of \_\_\_\_\_, extends to and includes the current condition of the claimant's lumbar spine, particularly degenerative disc disease, spondylosis, and/or herniations at L3-4 and L4-5."

A hearing on remand was held on November 3, 2004. The hearing officer determined that the compensable injury includes a failed lumbar laminectomy and disc herniations and post-surgical changes at L3-4 and L4-5 but that the compensable injury does not include degenerative disc disease and spondylosis.

The carrier appeals, contending that the hearing officer erred in his determinations; that one of the doctors has provided oral clarification and rescinded an earlier opinion; and that some of the diagnostic tests were unreliable. The file on remand does not contain a response from the claimant.

There was clearly a hearing on remand held, however, the file forwarded for review contained only one CD disc, that being from the initial CCH, Sequence No. 04. Inquiry determined that the hearing on remand, Sequence No. 05, was recorded on a CD. A search of the records revealed that no CD for Sequence No 05, the CCH on remand, could be found.

Section 410.203(a) requires the Appeals Panel to consider "the record developed at the contested case hearing." See *also* Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.2(a) (Rule 143.2(a)). The record of the hearing on remand is not available for review. Typically when we do not have a record, we remand for reconstruction of the record; however, that option is not available to us in this instance because Section 410.203(c) provides that "[a]n appeals panel may not remand a case under Subsection (b)(3) more than once."

Because the record of the hearing on remand is not available for review and because we are statutorily precluded from remanding this case for a second time for reconstruction of the record, we have no alternative but to allow the hearing officer's decision and order to become final pursuant to Section 410.204(c).

The true corporate name of the insurance carrier is **AMERICAN CASUALTY COMPANY OF READING, PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM  
350 NORTH ST. PAUL STREET  
DALLAS, TEXAS 75201.**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Margaret L. Turner  
Appeals Judge